

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARILYN MARGULIS,)
)
Plaintiff,) Case No.
)
v.) (Removed from the Circuit Court of
) St. Louis County,
HOMEADVISORS, INC.,) No. 18SL-CC04813)
)
and)
)
JOHN DOES 1-10,)
)
Defendants.)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant HomeAdvisor, Inc. (“Defendant” or “HomeAdvisor”), by counsel, and pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446, hereby removes this action from the Circuit Court of St. Louis County, Missouri, to the United States District Court for the Eastern District of Missouri. As grounds for this removal, Defendant states as follows:

1. On December 21, 2018, Plaintiff Marilyn Margulis (“Plaintiff”) filed an action in the Circuit Court of St. Louis County, Missouri, styled *Marilyn Margulis v. HomeAdvisors, Inc. and John Does 1-10*, Case No. 18SL-CC04813 (the “State Court Action”). HomeAdvisor was incorrectly identified in the case caption of the State Court Action as “HomeAdvisors, Inc.”
2. As required by 28 U.S.C. § 1446(a), attached are correct copies of all process and pleadings in the State Court Action. *See Exhibit A.* No further proceedings have taken place in the State Court Action.

3. The State Court Action is a civil action in which Plaintiff attempts to allege violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, and the Missouri No-Call Law, Mo. Rev. Stat. § 407.1107.

4. HomeAdvisor is the only identified defendant in the State Court Action. The Complaint does name John Does 1-10 as Defendants but states that the identities of such defendants “are not presently known” and they are therefore presently fictitious.

5. 28 U.S.C. § 1441(a) allows for removal of “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.”

6. 28 U.S.C. § 1331 grants United States district courts with jurisdiction over civil claims alleging violations of federal law. Plaintiff’s claim under the TCPA arises under federal law. *See* Pl.’s Pet. At ¶¶ 300-301, 306. Therefore, this Court has jurisdiction of Plaintiff’s TCPA claims in this action.

7. 28 U.S.C. § 1367 further grants district court supplemental jurisdiction over “all other claims” brought alongside claims over which the district court has original jurisdiction. Therefore, this Court has jurisdiction over Plaintiff’s state law claims in this action.

8. Additionally, this action is removed for the reason that there is diversity of citizenship under 28 U.S.C. § 1332. Under 28 U.S.C. §§ 1441 and 1446, removal is proper where complete diversity exists pursuant to the standard established in 28 U.S.C. § 1332. According to the Complaint, Plaintiff is a citizen of the State of Missouri. HomeAdvisor is a corporation incorporated under Delaware law with its principal place of business in the State of Colorado. *See* Pl.’s Pet. ¶ 9. The identities of Defendants John Does 1-10, “are not presently known” and they are therefore presently fictitious under 28 U.S.C. § 1441(b) and shall be

disregarded for purposes of determining citizenship for diversity of citizenship. *See id.* at ¶ 13. Accordingly, the controversy in this action is between citizens of different states.

9. A district court has original diversity jurisdiction where “the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.” 28 U.S.C. § 1332(a). The Complaint purports to allege claims for damages amounting to \$312,000.00, Pl. Pet. At ¶ 23, well in excess of the amount in controversy required for diversity jurisdiction under 28 U.S.C. § 1332(a).

10. HomeAdvisor was served with the Summons and Complaint in the State Court Action on January 15, 2019.

11. Therefore, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days of HomeAdvisor being served with a copy of the pleading from which it may first be ascertained that the case is one which is or has become removable, and is timely.

12. This Notice of Removal is being filed less than one year after suit was commenced in the state court, as required by 28 U.S.C. § 1446(c).

13. Venue of this removal is proper under 28 U.S.C. § 1441(a) because the United States District Court for the Eastern District of Missouri is the federal district court for the district embracing the place where the State Court Action is pending.

14. Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this action has been given simultaneously to all counsel of record, and Defendant shall promptly file a copy of this notice with the Clerk of the Circuit Court of St. Louis County, Missouri. *See Exhibit B.*

WHEREFORE, Defendant HomeAdvisor, Inc. respectfully requests removal of this action from the Circuit Court of St. Louis County, Missouri, to the United States District Court

for the Eastern District of Missouri and requests that further proceedings be conducted in this Court as provided by law.

Dated: February 14, 2019

Respectfully submitted:

SmithAmundsen LLC

By: /s/ James P. Sanders

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Attorneys for Defendant HomeAdvisor, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2019 the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system and by electronic mail upon:

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